

At the January 8, 2002 preliminary hearing, the primary issue before the Judge was which of respondent's insurance carriers was liable for providing treatment for claimant's work-related neck injury. Whether the neck injury was a new accident, or whether it was the natural and probable result of the earlier August 2, 1999 accident was determinative of this issue. Judge Frobish determined that respondent and Liberty, who was respondent's insurance carrier at the time of the August 2, 1999 accident, were the responsible parties.

Respondent and Liberty contend Judge Frobish erred in finding claimant's neck injury to be the natural and probable consequence of the August 1999 accident. They argue that claimant sustained a new work-related accident after Liberty's coverage ended and Fireman's Fund Insurance Company assumed the risk. Respondent and Liberty requests the Board to reverse the preliminary hearing Order and assess benefits against Fireman's Fund Insurance Company, which was respondent's insurance carrier at the time of the alleged series of subsequent accidents.

In his brief to the Board, claimant states no preference as to which insurance carrier should be required to provide his workers compensation benefits. Claimant merely contends that benefits should be assessed against respondent and its insurance carriers in one or the other of these two docketed claims.

Findings of Fact and Conclusions of Law

After reviewing the record compiled to date, the Board finds and concludes that this appeal should be dismissed.

There is no dispute that claimant's present need for medical treatment is the result of an injury or injuries that arose out of and in the course of his employment with respondent. Respondent and Liberty admit in their brief that "[t]he sole issue on appeal is which insurance carrier is responsible for providing Claimant medical treatment for his neck complaints." This dispute is resolved by determining the appropriate date of accident, which is not an issue listed in K.S.A. 44-534a as jurisdictional and does not otherwise raise an issue that the Judge exceeded his jurisdiction.¹ Clearly, the Judge did not exceed his jurisdiction.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.²

The Board is unaware of any other provision in the Workers Compensation Act that purports to give the Board jurisdiction to review a preliminary hearing order for redetermining the liability among multiple insurance carriers. The Board was presented

¹ See *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

with a similar issue in *Ireland*,³ where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for preliminary hearing benefits, the Board said:

Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. *Kuhn v. Grant County*, 201 Kan. 163, 439 P.2d 155 (1968); *Hobelman v. Krebs Construction Co.*, 188 Kan. 825, 366 P.2d 270 (1961).

WHEREFORE, the Board dismisses the appeal.

IT IS SO ORDERED.

Dated this _____ day of April 2002.

BOARD MEMBER

c: James B. Zongker, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and Liberty Mutual Ins. Co.
Timothy A. Emerson, Attorney for Respondent and Fireman's Fund Ins. Co.
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

³ *Ireland v. Ireland Court Reporting*, WCAB Docket No. 176,441 & 234,974 (Feb. 1999).